BASCO ENTERPRISES

v.

SOH SIONG WAI

HIGH COURT, SINGAPORE
WEE CHONG JIN CJ
[ORIGINATING SUMMONS NO. 1023 OF 1988]
9 FEBRUARY 1988

CIVIL PROCEDURE: *Application to transfer case from Magistrates Court to High Court.*

LAND LAW: *Acquisition - Whether applicant had raised a bona fide claim to the title of the property within the meaning of the State Lands Encroachment Act justifying transfer of case to the High Court.*

The applicant was at the material time the owner of No. 39 Stamford Road, Singapore ("the premises") which was part of the property included in a declaration by the Government of Singapore published under s. 5 of the Lands Acquisition Act. An inquiry was held under s. 10 which was attended by the applicant's solicitor.

An award was made by the Collector on 27 September 1985 and the applicant filed in a notice of appeal. On 15 September 1987 the collector took possession of the premises under s. 16 of the Lands Acquisition Act by posting on the premises the appropriate notice and serving a copy of it on the applicant. On 30 December 1987 upon the requisite notice being given by the collector to the Registrar of Deeds an entry was endorsed in the books of the registry to the effect that the premises had been vested in the state.

The Deputy Collector of Land Revenue took out a summons against the applicant in the Magistrate Court on the ground that the applicant had been in unlawful occupation of state land. The applicant applied for an order under s. 3 of the State Lands Encroachment Act that the proceedings be transfered from the Magistrates Courts to the High Court.

Held:

[1] That the only question for the determination of the Court in considering the applicant's application was whether the applicant had raised a *bona fide* claim to the title within the meaning of s. 3(3) of the State Lands Encroachment Act.

[2] As title to the property had been vested in the state, the applicant could no longer raise any *bona fide* claim to title as his claim lay in compensation.

[Application dismissed with costs.]

Case referred to:
Re Robinson's [1980] 1 MLJ 255

Legislation referred to:
Land Acquisition Act [Sing], ss. 3, 5, 8
State Lands Encroachment Act (Cap 315) [Sing], s. 3(3)

JUDGMENT

Wee Chong Jin CJ:

By this originating summons, the applicant, Basco Enterprises (Pte) Ltd. ("the applicant") sought an order under s. 3 of the State Lands Encroachments Act ("Act") (Cap. 315) that "the proceedings in Summons No. URA(L)/22/88 be transferred from the Magistrate's Court to the High Court." The summons was issued by the Magistrate's Court under s. 2 of the Act upon information by the respondent, the Deputy Collector of Land Revenue ("Collector") of the Urban Redevelopment Board that the applicant had been in "unlawful occupation" of state land.

Section 3 of the Act, in so far as relevant, provides as follows:

> (2) In any action commenced under s. 2 for the removal of any person in unlawful occupation of state land, the defendant may within such time as may be prescribed by the Rules of the Supreme Court for the time being in force, apply to the High Court for the action to be transferred to the High Court on the ground that the defendant is claiming title to the land.
>
> (3) On the hearing of any such application the High Court, if it is satisfied that a *bona fide* claim of title is raised, may make an order for the action to be transferred to the High Court.

"State land" is defined in s. 20 to include:

> all land contained or referred to in a notification or declaration made under the provisions of s. 3 or 5 of the Land Acquisition Act, and published in the Gazette in accordance with those provisions.

The only question for my decision was whether the applicant had raised a "*bona fide* claim to the title" within the meaning of s. 3(3), For reasons which I shall now give, I was not satisfied that any *bona fide* claim to title was raised and accordingly dismissed the application.

The applicant was, at the material time, the owner of the land Lot No. 8 TS10 on which stood a building known as No. 39 Stamford Road, Singapore ("the premises"). On 23 February 1984, the Government of Singapore, by Notification in the Government Gazette Extraordinary No. 11 of Declaration No. 593, published a declaration made under s. 5 of the Land Acquisition Act (Cap. 152) that the "pieces of land ... more particularly described in the Schedule hereto are needed for a public purpose, viz: Urban Redevelopment." The Schedule referred, *inter alia*, to Lot No. 8, TS10, the applicant's premises.

A notice under s. 8 of the Land Acquisition Act, stating, *inter alia*, that the applicant might make his claim for compensation to the Collector and calling upon the applicant to attend an Inquiry for the purposes specified in s. 10, was duly issued by the Collector and served upon the applicant. The Inquiry under s. 10 was held on 2 April 1984 and it was attended by the applicant's solicitor.

On 14 May 1984, the applicant's solicitors wrote to the Collector making a claim for compensation for S$15,000,000. The letter stated, *inter alia*, the following factors which the applicant had considered when arriving at the sum claimed for compensation:

i. The present owners had submitted plans to redevelop the said property according to the zoning requirements, they were fully prepared to redevelop the site taking into consideration any road widening proposal, or MRT or any other public scheme that may affect the site and its boundaries.

j. The owners were also prepared to preserve the facade of the building at their own expense or alternatively to preserve the facade and redevelop the interior structure of Stamford House to abide by the plans of the Urban Redevelopment Authority and any other authority.

The significance of the contents of this letter was that this appeared to be the first time the applicant had ever made any mention of being prepared to preserve the facade of the premises, or to redevelop the interior in accordance with the plans of the authorities. It was evident from the applicant's "outline planning application" dated 2 February 1983 that the applicant had, even as late as February 1983 intended to erect on the site of the premises a "15-storey shops (and) offices with car parks and 1-storey basement", which planning application, if approved, would, inevitably, have involved the demolition of the existing building on the premises.

On 27 September 1985, the Collector made an award of S$4,974,060 (part vacant possession). Notice of appeal against the Collector's award was lodged with the Appeals Board on behalf of the applicant on 3 October 1985.

On 2 December 1987, the amount of compensation awarded by the Collector was paid into Court under s. 40. (See Order of Court dated 11 November 1987 in Originating Summons 1206 of 1987).

Since the events which followed are of crucial importance to the outcome of this application, it is necessary, at this stage, to set out the relevant statutory provisions of the Land Acquisition Act.

Section 16 provides:

16. (1) When the Collector has made an award under s. 10, he may take possession of the land by posting thereupon an appropriate notice.

(2) Upon taking possession of the land under subsection (1), the Collector shall also serve a copy of the notice upon the persons interested in the land.

Section 18, in so far as material, provides:

18. Immediately on taking possession of any land under s. 16 or 17, the Collector shall:

(a) in the case of land registered under the provisions of the Registration of Deeds Act, give notice to the Registrar of Deeds who shall make an entry in the books of the registry that the land has vested in the state, and **upon that entry being made, the land shall vest in the state free from encumbrances;** or (emphasis added)

On 15 December 1987, the Collector took possession of the premises under s. 16 by posting thereupon an appropriate notice and serving a copy thereof upon the applicant. On 30 December 1987, upon the requisite notice being given by the collector to the Registrar of Deeds, an entry was endorsed in the books of the registry to the effect that the premises had vested in the state. Upon that entry, the premises vested in the state free from encumbrances.

It is, in my opinion, manifestly clear from this sequence of events that the title to the premises had vested absolutely in the state. After possession had been taken of the premises, the Government was no longer at liberty to withdraw from the acquisition except in the case provided for in s. 43 of the Land Acquisition Act (See s. 48). In this connection, I find the words of Lord Wilberforce, when delivering the judgment of the Privy Council in *Re Robinson's* [1980] 1 MLJ 255, particularly apt:

> Once the machinery for acquisition has started to operate, which it has under s. 5, then, subject to the power to withdraw, the owner of the land, who, it is important to observe, has no right to object to the acquisition, has an interest only in compensation.

In my opinion, the result was that the applicant could no longer at this stage raise any "*bona fide* claim to title"; his claim lay in compensation.

Despite what appeared to me to be the clear interpretation of these statutory provisions, the applicant, in the affidavit filed in support of the application, endeavoured to advance a number of "public law" arguments in support of their contention that as the acquisition was "*ultra vires*" and "void", they were "never lawfully deprived of his title to the premises", In my view, these contentions proceeded upon the wrong premises and overlooked the important legal effects of the statutory provisions referred to earlier.

But even proceeding on the assumption that these arguments could legitimately be canvassed at this stage, I was of the view that there was no substance whatever in these contentions.

The applicant alleged that the Urban Redevelopment Board ("URA") and the Ministry of National Development ("MND") acted "*ultra vires*" the Land Acquisition Act and for an "improper purpose" in that "they acquired the premises at the 1973 market value and then to resell it by open public tender (including tender by the applicant) at the current market value, thereby ensuring the accrual of a considerable profit to the URA." The short answer to this contention (as was pointed out by the Collector in his affidavit) was that the premises were not acquired by the URA or the MND; the premises were acquired by the Government as was evident from Declaration No. 593, referred to earlier, which was signed by the Secretary to the Cabinet.

It was further alleged by the applicant that the acquisition was done for "improper purposes" and "in bad faith". The basis of this suggestion was that although the declared public purpose was "Urban Redevelopment", the real intention of the authorities was the preservation and conservation of the premises. In response, an affidavit by the Senior Principal Officer, Planning and Development Division of the URA was filed on behalf of the Collector. The affidavit stated that 'the public purpose viz urban redevelopment' stated in the Declaration envisaged a "comprehensive development" of what was known as the Central Area (which included the applicant's premises and its immediate surrounds), the "preservation and conservation" of the premises and the adjacent buildings and the integration of these buildings with development on the other adjoining pieces of land previously acquired by the Government from the same public purpose, *viz*: Urban Redevelopment. In this connection, I accept the view expressed by the Collector in his affidavit that "Urban Redevelopment must be looked at as a whole and in the context of the area being developed which may consist in part of re-building and in part conserving buildings in the area being developed". Furthermore, I entertained no doubts that conservation or preservation of historical and heritage buildings which

had become dilapidated, whether carried out by themselves or together with other developments in designated urban areas, clearly encompassed "Urban Redevelopment". As stated in the Collector's affidavit, "the fact that Stamford House (the applicant's premises) is to be renovated and conserved instead of being knocked down and another building erected in its place does not mean that Stamford House has not been redeveloped."

For these reasons, I was of the view that the application was plainly without merit and I dismissed the application costs.

Also found at [1989] 1 CLJ 1024